

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-8306  
Conference Calendar

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JOSEPH AMIEL GROSS, JR.,

Petitioner-Appellant,

versus

WILLIAM HEDRICKS, Warden,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. A-92-CV-580  
- - - - -  
(March 22, 1994)

Before KING, DAVIS and DeMOSS, Circuit Judges.

PER CURIAM:\*

Joseph Amiel Gross, Jr. pleaded guilty to armed bank robbery under 18 U.S.C. § 2113(d) and was sentenced to 70 months' imprisonment and five years' supervised release. This case is here on appeal of the denial of his petition for a federal writ of habeas corpus under 28 U.S.C. § 2241.

Gross argues that he was denied due process at his disciplinary proceedings. The records of Gross' disciplinary proceedings demonstrate that Gross was notified on March 11 that

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

he was charged with fighting with another person on March 9, 1991, that a hearing was held on March 21, that he had a staff representative, and that he was allowed to call witnesses. He was found guilty of the charges, and he was given a written statement of the evidence relied upon and a reason for the action taken. Gross was afforded all the process that was due under the Constitution. See Wolff v. McDonnell, 418 U.S. 539, 563-66, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). He was not denied due process because he received notice of the claim beyond the 24-hour notice period. Wolff requires advance notice, but does not specify a 24-hour period. Gross received notice well in advance of the hearing, and he does not allege how he was prejudiced in preparing for the hearing by the late notice.

Although Gross disputes the charge because he contends that he was acting in self-defense, there was sufficient evidence to support the finding that he was fighting with another inmate based on the charging officer's testimony that he observed Gross fighting and the other witnesses' testimony. This satisfies the "some evidence" standard. Gibbs v. King, 779 F.2d 1040, 1044 (5th Cir.), cert. denied, 476 U.S. 1117 (1986).

Gross argues that the sentencing court could not impose a term of supervised release, and that he was denied effective assistance of counsel, because his attorney failed to object to the imposition of a term of supervised release. He also argues that he can raise his sentencing issue in this § 2241 proceeding because he has already filed a § 2255 motion, and if he attempts to file this claim in a second § 2255 motion, it will be

dismissed for abuse of § 2255 procedures. He argues that this makes § 2255 inadequate and ineffective.

Although the district court correctly held that § 2255, not § 2241, is the proper vehicle for Gross to challenge his sentence, see Cox v. Warden, Federal Detention Center, 911 F.2d 1111, 1113 (5th Cir. 1990) (citation omitted), this Court chooses to address his claim on the merits.

Gross argues that the sentencing court could not impose a term of supervised release because it was not authorized by statute. Gross was convicted of armed bank robbery, which is a Class B felony subject to a maximum term of imprisonment of 25 years. See 18 U.S.C. § 2113(d) and § 3559(a)(2). A supervised release term of up to five years is authorized for Class B felonies. 18 U.S.C. § 3583(b); U.S.S.G. § 5D1.2(b)(1). The sentencing court was authorized to impose a supervised release term of five years. Gross' argument based on United States v. Allison, 953 F.2d 870 (5th Cir.), cert. denied, 112 S.Ct. 2319 (1992), corrected on rehearing, 986 F.2d 896 (5th Cir. 1993), has been rejected by this Court. See United States v. Wangler, 987 F.2d 228, 231 (5th Cir. 1993).

AFFIRMED.